

*Crown Employees*  
**Grievance Settlement  
Board**

Suite 600  
180 Dundas St. West  
Toronto, Ontario M5G 1Z8  
Tel. (416) 326-1388  
Fax (416) 326-1396

**Commission de  
règlement des griefs**  
*des employés de la  
Couronne*

Bureau 600  
180, rue Dundas Ouest  
Toronto (Ontario) M5G 1Z8  
Tél. : (416) 326-1388  
Télééc. : (416) 326-1396



GSB#2007-3866  
UNION#2007-0506-0008

**IN THE MATTER OF AN ARBITRATION**

**Under**

**THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT**

**Before**

**THE GRIEVANCE SETTLEMENT BOARD**

**BETWEEN**

Ontario Public Service Employees Union  
(Strachan)

**Union**

**- and -**

The Crown in Right of Ontario  
(Ministry of Transportation)

**Employer**

**BEFORE**

Dan Harris

**Vice-Chair**

**FOR THE UNION**

Jennifer Fehr  
Ontario Public Service Employees Union  
Grievance Officer

**FOR THE EMPLOYER**

Lisa Amin  
Ministry of Government Services  
Counsel

**SUBMISSIONS**

April 30, 2009.

## Decision

[1] This matter proceeded by way of written submissions. The Union set out the factual background as follows:

1. Edie Strachan (“the Grievor”) started working for the Ontario Public Service in 1991 as a Fuel and Tobacco Tax Inspector for the Ministry of Finance.
2. On July 31, 2006, she was informed that she was the successful candidate for a Transportation Enforcement Officer 2 position (TEO2) effective September 1, 2006 (See Appendix A). The Grievor felt that this position was a promotion as per article 7.1.1 of the collective agreement.
3. Because the Grievor did not currently possess Commercial Vehicle Safety Alliance (“CVSA”) certification required of a TEO2, she was informed that she would be filling the position through an underfill at a Transport Enforcement Officer 1 (TEO1) level, until she had completed the requisite training at which point she would be reclassified as a TEO2.
4. While the Grievor completed the CVSA certification training as of July 17, 2007 and began Level 1 mechanical inspections as of that date, it was not until September 24, 2007 that the Grievor was reclassified as a TEO2 and was paid according to this position. At this time the Grievor expected to be placed in step 3 of the TEO2 paygrid based on article 7.1.2 of the collective agreement which requires at least 3% increase for a promotion. Instead, she was placed in step 1 of the TEO2 paygrid.
5. On November 21, 2007, the Grievor filed a grievance alleging that the Employer was not paying her at the appropriate step in the classification. It is the Grievor’s position that she should have been placed in step 3 of the paygrid as of July 17, 2007 when she received her CVSA certification.
6. It was not until September 22, 2007 that the Employer advised the Grievance Department of the Union and the Grievor that a Memorandum of Settlement (“the Memorandum”) dated March 3, 2003, outlining the protocol for hiring Transportation Enforcement Officer positions was in place (see Appendix E).
7. This Memorandum makes the following statements in paragraphs 6 and 8 respectively:

Para. 6 - Existing OPS employees that apply for a TEO2 position and accept a demotion into the TEO2U position will commence their employment at the top of the TEO1 salary grid and shall remain at that rate until the underfill status is removed at which point they will proceed to the first step in the TEO2 salary range.

Para. 8 - TEO2Us will have their underfill status removed within 12 months of their date of hire unless they fail to successfully complete the mandatory training required by the Employer.

- [2] In addition to these facts, the Employer noted, *inter alia*, that the offer of employment, which was signed and accepted by the grievor, confirmed that the grievor's acceptance of the TEO position would be considered a voluntary demotion.
- [3] The Employer relies upon an agreement between the parties, which it says governs the grievor's circumstances. For completeness, that agreement is reproduced here:

MEMORANDUM OF SETTLEMENT

BETWEEN:

Ontario Public Service Employees Union  
(Union)

- and -

The Crown in Right of Ontario  
(Ministry of Transportation)  
(Employer)

WHEREAS a large number of individual employees filed grievances regarding the hiring process for the Transportation Enforcement Officer position;

AND WHEREAS the parties wish to resolve the grievances in part by developing a protocol applicable to the hiring of Transportation Enforcement Officers and in part by way of order of Vice-Chair Herlich of the Grievance Settlement Board;

AND without prejudice to either parties' position regarding the application of an "Underfill Policy;

AND without prejudice or precedent to any other classification or position within the OPS;

NOW THEREFORE the parties agree to the following protocol for the filling of Transportation Enforcement Officer (TEO) positions:

1. When a vacancy occurs in a TEO 2 position, and after such vacancy is cleared through the corporate placement process, the parties agree that existing TEO 2s (hereinafter "TEO 2") and employees who are hired into a TEO 2 underfill capacity (hereinafter "TEO 2U") who have current requests for a lateral transfer on file will have the opportunity to laterally transfer into the vacancy prior to the posting of the vacancy pursuant to Article 6 of the

Collective Agreement, and such employees will be provided the position at the same status they currently hold – TEO 2 or TEO 2U.

2. After the lateral transfer process has been completed the Employer will fill the vacancy pursuant to Article 6 of the collective agreement. The position shall be filled as a TEO 2 position with the opportunity for less qualified employees to be hired as a TEO 2U.
3. Existing TEO 2 and TEO 2U based in workplaces other than the vacancy location, and within the posted area of search, may apply for the vacancy. If such employee is a successful candidate in the competition they will be offered the position at the same status they currently hold – TEO 2 or TEO 2U.
4. If the successful candidate accepts the offer they will receive relocation expenses in accordance with the employer's policy pursuant to article 6 of the Collective Agreement.
5. Employees hired pursuant to a posting who are hired as TEO 2U will commence their employment at the salary rate associated with the first step in the TEO 1 salary grid. Once they have concluded six months employment they will move to the second step in the TEO 1 salary grid.
6. Existing OPS employees that apply for a TEO 2 position and accept a demotion into the TEO 2U position will commence their employment at the top of the TEO 1 salary grid and shall remain at that rate until the underfill status is removed at which point they will proceed to the first step in the TEO 2 salary range.
7. The employer agrees to individually assess all applicants to determine whether they are qualified for the TEO 2 position or whether they are subject to an underfill assignment.
8. TEO 2Us will have their underfill status removed within 12 months of their date of hire unless they fail to successfully complete the mandatory training required by the Employer.
9. If a TEO 2U fails to successfully complete the mandatory training and assessment they will not progress to the TEO 2 until they have successfully completed the mandatory training.
10. The employer will make reasonable opportunities available to the TEO 2Us to ensure that the employee can successfully complete the mandatory training within 12 months of their hire or promptly thereafter.
11. For positions posted at TEO 2 (Bilingual) or TEOL 2 (Mechanics License ) the above principles shall be applicable as modified to reflect the mandatory nature of the qualifications for bilingual status or a mechanics license.
12. This agreement shall continue in force until such time as one of the parties provides 180 days of written notice to the other party of their intention to terminate the agreement at which time the parties will revert to the status prior to the date of this agreement.

Dated this 3 day of March, 2003.

[4] The Union says that the combined effect of that agreement and the Employer's monopoly control over the training necessary to assume the duties of a TEO2 is unfair to the grievor and others in her position. Succinctly put, the grievor, Edie Strachan, successfully applied for the position of Transportation Enforcement Officer 2 (TEO2). Because she lacked the necessary qualifications, she was placed into the position through an underfill at a TEO1 level until she received the necessary training. The grievor says that the TEO2 position was a promotion and that she was improperly placed at step one of the TEO2 grid after she received her training. It was her view that she ought to have been placed at step 3, pursuant to article 7 of the collective agreement. The Union says that the agreement set out above has the effect of circumventing articles 7.1.1 and 7.1.2 of the collective agreement, which read as follows:

- 7.1.1 Promotion occurs when the incumbent of a classified position is assigned to another position in a class with a higher maximum salary than the class of his or her former position.
- 7.1.2 An employee who is promoted shall receive that rate of pay in the salary range of the new classification which is the next higher to his or her present rate of pay, except that:
  - (a) where such a change results in an increase of less than three percent (3%), he or she shall receive the next higher salary rate again, which amount will be considered as a one-step increase;
  - (b) a promotional increase shall not result in the employee's new salary rate exceeding the maximum of the new salary range except where permitted by salary note.

[5] The Employer relies on the memorandum of settlement, which it says governs this situation.

## **REASONS FOR DECISION**

[6] I have carefully considered the parties' submissions and conclude that the grievance must be dismissed. The Union took the following position regarding the memorandum:

### **Union Position on Memorandum**

8. The Union does not dispute that the Memorandum was in place at the time the Grievor was hired as a TEO2.
9. The Union does not dispute that paragraph 6 of the Memorandum applies to the Grievor as an existing OPS employee.
10. The Union does not dispute that the Grievor's treatment was consistent with the terms of the Memorandum.

[7] The Union concedes that the memorandum was in effect at the material time, applied to the grievor and that the grievor was treated in a manner consistent with the memorandum.

For convenience, paragraph 6 of the memorandum is as follows:

Existing OPS employees that apply for a TEO 2 position and accept a demotion into the TEO 2U position will commence their employment at the top of the TEO 1 salary grid and shall remain at that rate until the underfill status is removed at which point they will proceed to the first step in the TEO 2 salary range.

[8] Paragraph 6 of the memorandum sets out that OPS employees that apply for the TEO2 position and accept a demotion to take it on an underfill basis commence their employment at the top of the TEO1 grid and advance to the first step of the TEO2 grid when the underfill status is removed. That is what happened to the grievor. It is

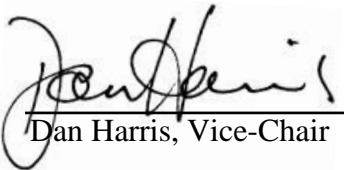
what the offer of employment letter of July 31, 2006 said would happen. The grievor accepted the position on the express understanding that she was accepting a voluntary demotion. All of the conditions of paragraph 6 have been met, and no question of fairness arises. Indeed, it would be unfair to deny the Employer the benefit of its agreement with the Union embodied particularly in paragraph 6 of the memorandum.

[9] The Union and Employer have entered into agreements that govern the working conditions of the members of the bargaining unit. This memorandum of settlement is part of that agreement. It sets out the parties' agreement on how article 7 will be interpreted in circumstances such as these. The parties' agreement is to be respected.

## **THE DECISION**

[10] The grievance is dismissed.

Dated at Toronto this 11<sup>th</sup> day of May 2009.

  
Dan Harris, Vice-Chair